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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Price Cap Regulation of
Local Exchange Carriers

Rate of Return Sharing and
Lower Formula Adjustment

CC Docket No. 93-179

**Bell Atlantic¹ Reply to
Comments on Ameritech's Emergency Stay Motion**

In its emergency motion for a stay² of the Commission's Add-back Order,³ Ameritech has made a showing that each factor considered by the Commission in deciding a stay application is satisfied. As such, the requested stay should be granted.

MCI and AT&T, the only parties to object to the Ameritech motion, argue that price cap sharing should import all the

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.

² Emergency Motion for Stay Pending Judicial Review (filed April 28, 1995) at 2-4.

³ Price Cap Regulation of Local Exchange Carriers - Rate of Return Sharing and Lower Formula Adjustment, Report & Order, CC 93-179 (rel. April 14, 1995).

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procedures from rate of return.⁴ This is wrong. The basis of these two types of regulations are distinct, and indeed, inconsistent. Moreover, MCI concedes that, at least for the current tariff filing, add-back is based on "past history."⁵ Both MCI and AT&T nevertheless offer only unsupported responses to Ameritech's arguments demonstrating that this aspect of the order violates the rule against retroactive ratemaking. As a result, the oppositions to Ameritech's motion provide no basis for denying a stay.

If the Commission were nevertheless to deny Ameritech's motion for a stay of the entire add-back order (which it should not), it should still grant Bell Atlantic and Southwestern Bell's joint petition for a partial stay of this order.⁶ This narrower petition requests a stay only of the retroactive application of the add-back requirement in the current year's tariff filing. As demonstrated in the joint petition, this aspect of the order cannot survive

⁴ Opposition of MCI Telecommunications Corporation to Emergency Motion for Stay Pending Judicial Review at 5 (filed May 5, 1995) ("MCI Opposition"); AT&T's Opposition To Stay at 3 (filed May 5, 1995).

⁵ MCI Opposition at 7.

⁶ Joint Petition for a Partial Stay and For Imposition of an Escrow or Accounting Mechanism Pending Judicial Review, CC 94-1 and CC 93-179 (filed May 9, 1995) ("Joint Petition").

appeal, and the factors traditionally considered by the Commission favor preservation of the *status quo* pending appeal.⁷

Respectfully submitted,

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Dated: May 17, 1995

⁷ Joint Petition at 22-27. MCI argues that the Ameritech motion is not in the public interest because MCI's customers would not receive the benefit of any price decreases. In fact, to the extent MCI actually intends to pass any rate decrease on to its customers, granting of a stay should have no impact. MCI could still "account for the anticipated recovery of any sums subject to the accounting order or placed in the escrow account." Joint Petition at 25. Any uncertainty in that recovery by MCI should be unaffected by the identity of the parties that hold the disputed amounts prior to resolution by the Court of Appeals.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Bell Atlantic Reply to Comments on Ameritech's Emergency Stay Motion" was served this 17th day of May, 1995 by first class mail, postage prepaid, on the parties on the attached list.


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